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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-203711

DATE: November 23, 1981

MATTER OF: General Devices, Inc.

DIGEST:

1. Where doubt exists as to when protester knew or should have known of basis for protest, doubt is resolved in favor of protester.
2. Protest alleging deficiencies in evaluation on which award was based is denied where record indicates evaluation was conducted in accordance with evaluation system set forth in RFP which gave due weight to technical and cost merits of proposals.

General Devices, Inc. protests the award of a cost-plus-fixed-fee contract to CDI Corporation under request for proposals (RFP) No. DERP65-80WP15260 issued by the Department of Energy (DOE). The solicitation was for drafting support services.

General Devices argues that as the incumbent contractor it had previously performed in an excellent manner, for which it received commendations from DOE, and that its price for the base year plus two option years was almost \$122,000 lower than CDI's. The protester also asserts that it is being asked to transfer its employees to the new contractor and thus that DOE will be paying more for the same people to do the same job. In effect, General Devices disagrees with the evaluation of its proposal.

Initially, we note that the agency maintains that the protest is untimely under section 21.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. Part 21 (1981), which

requires that protests be filed not later than ten working days after the basis for protest was known or should have been known, whichever is earlier. DOE asserts that General Devices was notified by telephone on May 29, 1981, that award had been made to CDI and notes that General Devices' protest was received at GAO on June 15, 1981, which was 11 working days thereafter. General Devices contends that it was not informed of the award until June 2, 1981. The record, however, contains a "Memo to the File," signed by the contracting officer, which states that he advised a General Devices' representative, who called on the afternoon of May 29, 1981, that award had been made to CDI.

Nevertheless, the "Memo to the File" contains no indication that the protester was informed at that time of the reasons for rejection of its proposal or that its evaluated cost was lower than that of CDI. Rather, the record suggests that General Devices was not advised in this regard until at least June 2, 1981, when an informal meeting with the contracting officer took place. The contracting officer's "Memo to the File" states that this meeting was arranged during the phone conversation with General Devices on May 29, 1981. Consequently, we believe that the record is not conclusive on the issue of timeliness. Where doubt exists as to when a protester knew or should have known of the basis for protest, that doubt is resolved in favor of the protester. Dictaphone Corporation, B-196512, September 17, 1980, 80-2 CPD 201.

Turning to the merits of General Devices' protest, the RFP provided that each proposal would be evaluated on a point system with respect to cost and technical factors and that cost would constitute 30 percent of the overall evaluation score, while technical factors would constitute 70 percent thereof. The technical evaluation factors, listed in descending order of importance, were (1) Project Organization and Personnel, (2) Executive Summary, and (3) Prime Contract Experience. Award was to be made to the responsible offeror submitting the proposal with the highest total evaluated score.

The record indicates that CDI received a higher technical score than General Devices, and the highest total evaluated score. While General Devices received the highest score for cost, both its technical score and total evaluated score were lower than CDI's (as well as those of one other offeror).

General Devices apparently believes that since its proposal was found to be technically acceptable and it offered the lowest estimated cost-plus-fixed fee, it should have been awarded the contract. However, as noted above, the evaluation and award criteria set forth in the RFP did not provide for award to the offeror with the lowest estimated cost who has a technically acceptable proposal. Further, it is well established that in a negotiated procurement, cost need not be the controlling factor for award. General Exhibits, Inc., 56 Comp. Gen. 882 (1977), 77-2 CPD 101; Bell Aerospace Company, 55 Comp. Gen. 244 (1975), 75-2 CPD 168.

Regarding the technical evaluation, it is the position of this Office that procuring agencies are vested with a reasonable range of discretion in evaluating and determining the relative merits of competing proposals, and such determinations will not be questioned unless they are clearly arbitrary, unreasonable, or in violation of procurement statutes and regulations. First Ann Arbor Corporation, B-194519, March 4, 1980, 80-1 CPD 170. It is not our function to evaluate proposals in order to determine which should have been selected for award or to rescore the proposals, and our Office will not substitute its judgment for that of the procuring agency by making an independent determination. Panuzio/Rees Associates, B-197516, November 26, 1980, 80-2 CPD 395.

General Devices asserts that it and its individual employees had been commended by DOE for excellent performance on the predecessor contract, and that CDI will be using the same employees General Devices used to do the same work, but that the Government will now be paying more for it. In effect, the protester questions how, under these circumstances, its technical proposal could have been found inferior to that of CDI.

DOE responds by pointing out that the scope of the instant contract is greater than that of the prior contract, requiring a larger work force and a greater need for managerial skills. For example, a major deficiency found by the technical evaluation panel in General Devices' proposal was that it proposed to use technicians who had no prior managerial experience, and who were found to have exhibited no managerial skills, in managerial positions. While CDI did opt to retain some of the same technicians, it is not employing them in a managerial capacity.

We agree that these are legitimate considerations under the RFP's evaluation scheme and that the evaluators could therefore award a higher score to CDI for this element of CDI's proposal.

Under the circumstances, that is, where there is approximately an 8 percent difference in estimated cost but an 18 percent difference in technical score, we conclude that the award resulted from the exercise of reasonable judgment by the contracting officer consistent with the evaluation procedures set forth in the RFP. The record is devoid of any evidence that the evaluation was not conducted in accordance with the evaluation scheme set forth in the RFP or that it was inconsistent with the pertinent procurement regulations.

The protest is denied.

for *Milton J. Socolan*
Comptroller General
of the United States